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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 DAVID C. FORNEY,

11 Plaintiff,

12 v.

13 DARLA J. HITNER, et al.,

14 Defendants.

CASE NO. C13-2176JLR

ORDER DISMISSING CASE AND  
REVOKING IFP STATUS ON  
APPEAL

15 **I. INTRODUCTION**

16 Before the court is Plaintiff David C. Forney's amended complaint. (Am. Compl.  
17 (Dkt. # 13).) Mr. Forney is proceeding pro se and *in forma pauperis* ("IFP"). (See  
18 12/11/13 Order (Dkt. # 3).) Under 28 U.S.C. § 1915(e), district courts have authority to  
19 review IFP complaints and must dismiss them if "at any time" it is determined that a  
20 complaint is frivolous or fails to state a claim on which relief may be granted. 28 U.S.C.  
21 § 1915(e)(2); *see also* 28 U.S.C. § 1915A(b)(1). Section 1915(e) applies to all IFP  
22 proceedings, not just those filed by prisoners. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th

1 Cir. 2000). The court previously reviewed the complaint in this case and determined that  
2 it was frivolous. (*See* 12/12/13 Order (Dkt. # 10).) Mr. Forney then filed an amended  
3 complaint. (Am. Compl.) The Amended Complaint adds virtually no new factual  
4 allegations and does nothing to change the fact that the complaint is frivolous. Indeed, it  
5 appears to the court that further amendment of the complaint would be futile because Mr.  
6 Forney's allegations, even liberally construed, do not support the claims he asserts.  
7 Accordingly, the court DISMISSES Mr. Forney's amended complaint WITH  
8 PREJUDICE and revokes IFP status in the event that he appeals.

## 9 **II. BACKGROUND**

10 Mr. Forney filed a motion to proceed IFP and a proposed complaint on December  
11 5, 2013. (*See* IFP Mot. (Dkt. # 1).) Six days later, Magistrate Judge Mary Alice Theiler  
12 granted Mr. Forney's IFP motion. (11/12/13 Order.) Mr. Forney filed his complaint the  
13 next day, and immediately filed five motions for various forms of relief, including a  
14 "Motion to freeze all assets," a "motion for judgment," and a "motion for damages,"  
15 among others. (*See* Dkt. ## 5-9.)

16 In his original complaint, Mr. Forney alleged that his ex-wife and former in-laws  
17 (and their new spouses) are engaged in a vast conspiracy against him. (*See generally*  
18 Compl. (Dkt. # 4).) He alleged that "MOST OF THE DEFENDANTS OR THEIR  
19 SPOUSES, IN THIS CASE, ENTERED INTO A CRIMINAL CONSPIRACY,  
20 TOGETHER. COMMITTING ACTIONS WHICH CAUSED THE LOSS WORTH  
21 OVER \$500,000.00 TO THE PLAINTIFF, DAVID C. FORNEY, IN THIS CASE." (*Id.*  
22 at 5.) Principally, Mr. Forney alleged that he was denied money due to be paid to him by

1 his former father-in-law as a result of a series of dark events that occurred in the 1980's  
2 and 1990's. (*Id.* 7-18.) These events include an alleged rape in 1984, an alleged murder  
3 of an active duty U.S. Sailor shortly thereafter, and an attempt to poison Mr. Forney in  
4 1990. (*See id.*) Mr. Forney alleged that "THERE WAS A SUBSTANTIAL AMOUNT  
5 OF FINANCIAL LOSS; IN THE UNDERHANDED WAY, CRIMINAL CONSPIRACY  
6 WAY . . ." and requested \$500,000.00 in damages. (*Id.* at 13, 21.)

7       After the court dismissed Mr. Forney's complaint pursuant to 28 U.S.C. § 1915(e),  
8 Mr. Forney filed an amended complaint. The factual allegations in the new complaint are  
9 virtually unchanged. (*Compare* Am. Compl. with Compl.) Mr. Forney alleges the same  
10 family conspiracy and the same claims based upon that conspiracy. (*Id.*) Mr. Forney's  
11 new complaint is different only in that it raises his damages demand to \$8,000,000.00  
12 (Am. Compl. at 2), alleges that he found a picture of a lynch mob scene in his son's car  
13 (*id.* at 15), and alleges that he has "been under federal surveillance for years," and "that it  
14 was due to dreams & visions from my lord and savior Jesus Christ" (*id.*). In terms of  
15 authority, Mr. Forney does nothing to address the reasons the court previously dismissed  
16 his complaint. (*See* Am. Compl.) Instead, he provides several quotations from the Bible,  
17 including admonitions that "THALL SHALT NOT FOLLOW A MULTITUDE TO DO  
18 EVIL" and "NOW THOU ART CURSED FROM THE EARTH, WHICH HATH

1 OPENED HER MOUTH TO RECEIVE THY BROTHERS BLOOD FROM THY  
2 HAND.”<sup>1</sup> (*Id.* at 18.)

### 3 III. ANALYSIS

4 The court concludes that Mr. Forney’s amended complaint still fails to state a  
5 claim upon which relief may be granted and DISMISSES the amended complaint  
6 pursuant to 28 U.S.C. § 1915(e).

7 A plaintiff must “plead a short and plain statement of the claim showing that the  
8 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This statement must be sufficient to  
9 “give the defendant fair notice of what the plaintiff’s claim is and the grounds upon  
10 which it rests.” *Conley v. Gibson*, 355 U.S. 41, 47 (1957). The factual allegations of a  
11 complaint must be “enough to raise a right to relief above the speculative level.” *Bell*  
12 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A complaint may be dismissed as  
13 a matter of law if it lacks a cognizable legal theory or states insufficient facts under a  
14 cognizable legal theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th  
15 Cir. 1984).

16 Just as before, none of Mr. Forney’s pleadings demonstrate that he is entitled to  
17 relief. *See* Fed. R. Civ. P. 8(a)(2). Mr. Forney brings a claim under 42 U.S.C. § 1983,  
18 but he alleges no action by any government entity. (*See* Compl.) Purely private conduct  
19 is not actionable under § 1983, “no matter how discriminatory or wrongful.” *Am. Mfrs.*

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21 <sup>1</sup> Mr. Forney qualifies these citations by stating that “these five Bible verses are listed for  
22 informational reasons only & are not intended to justify or seek any relief in this case unless the  
court should see fit to do so.” (*Am. Compl.* at 18.)

1 *Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999). Next, Mr. Forney brings a claim under  
2 18 U.S.C. § 371, but this is a criminal statute and is not a proper basis for civil liability.  
3 *Ryan v. Ohio Edison Co.*, 611 F.2d 1170 (6th Cir. 1979) (private litigants may not sue for  
4 redress under 18 U.S.C. § 371); *Laupot v. Berley*, 865 F.2d 255 (4th Cir. 1988) (per  
5 curiam) (same); *Milburn v. Blackfrica Promotions, Inc.*, 392 F. Supp. 434, 435 (D.C.N.Y.  
6 1974) (same). Last, Mr. Forney brings a claim under 42 U.S.C. § 1981, but he fails to  
7 allege facts that would give rise to an inference of purposeful discrimination on the basis  
8 of race, a prerequisite for liability under § 1981. *See Moore v. Fed. Nat’l Mortg. Ass’n*,  
9 No. C11–1342RSL, 2012 WL 424583, at \*3 (W.D. Wash. Feb. 9, 2012) (citing *Gen.*  
10 *Bldg. Contractors Ass’n, Inc. v. Penn.*, 458 U.S. 375, 391 (1982) (“§ 1981, like the Equal  
11 Protection Clause, can be violated only by purposeful discrimination.”)).

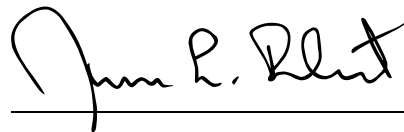
12 Accordingly, the court DISMISSES Mr. Forney’s complaint without leave to  
13 amend. Leave to amend is mandatory for pro se plaintiffs unless it is absolutely clear that  
14 amendment could not cure the defects. *Lucas v. Dep’t of Corrections*, 66 F.3d 245, 248  
15 (9th Cir. 1995) (per curiam). This standard is met here. The court previously warned Mr.  
16 Forney that if he failed “to file an amended complaint that corrects the noted deficiencies  
17 and meets the required pleading standards, the court w[ould] dismiss Mr. Forney’s  
18 complaint with prejudice.” (12/12/13 Order at 4.) Mr. Forney has not corrected any of  
19 the deficiencies identified in the court’s prior order. Accordingly, the court DISMISSES  
20 his complaint WITH PREJUDICE and without leave to amend. In addition, in the event  
21 that Mr. Forney appeals, the court revokes his IFP status on appeal. An appeal may not  
22 be taken IFP if the trial court certifies in writing that it is not taken in good faith. 28

1 U.S.C. § 1915(a)(3). The language “not taken in good faith” has been interpreted to  
2 include frivolous appeals, so it is appropriate to revoke IFP status on appeal if the district  
3 court finds the appeal to be frivolous. *Hooker v. American Airlines*, 302 F.3d 1091, 1092  
4 (9th Cir. 2002). The court already determined that Mr. Forney’s original complaint was  
5 frivolous, and makes the same finding now with respect to his amended complaint. Any  
6 appeal from this dismissal would not be taken in good faith.

7 **IV. CONCLUSION**

8 Mr. Forney’s complaint is DISMISSED with prejudice. The court STRIKES all  
9 pending motions in this case (Dkt. # 17) and REVOKES Mr. Forney’s IFP status in the  
10 event that he decides to appeal.

11 Dated this 15th day of January, 2014.

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14 JAMES L. ROBART  
15 United States District Judge  
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